

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

vs.

CIVIL NO. 10-930 MCA/LFG
CRIM. NO. 06-2605 MCA

RICKY BARKSDALE GREEN,

Defendant-Movant.

**ORDER WITHDRAWING ORDER TO ANSWER AND
ESTABLISHING SCHEDULE FOR FILING
AMENDED MOTION TO VACATE AND ANSWER THERETO**

THIS MATTER comes before the Court on Objections [Doc. 10] filed by Defendant-Movant Ricky Barksdale Green (“Green”). Green objects to the Order to Answer [Doc. 9], filed on December 3, 2010. In that Order, the Court noted that Green was granted a request to amend his Motion to Vacate to include a claim for ineffective assistance of counsel, but he failed to file an Amended Motion within the time allotted. The Court therefore found that Green waived his right to bring such a claim and ordered the United States to file an Answer to his original Motion to Vacate.

Green now asserts that he never received notice of the Order allowing him until November 29, 2010 to file an Amended Motion. Court records indicate that a copy of the Order was mailed to Green at his current address of record at the federal correctional institution in Three Rivers, Texas, at the time it was entered. There is no explanation for his non-receipt of the Order, but the Court does not find it necessary to inquire into those circumstances. In the interests of due process and efficiency, the Court will withdraw its Order to Answer [Doc. 9] and permit Green to file an Amended Motion.

As discussed in the earlier Order Granting Motion to Supplement [Doc. 8], the Court will permit Green to supplement his Motion to Vacate, and will further extend the time for Respondent

to file an Answer to the amended Motion to Vacate. The Court notes that, although Green included several disparaging comments about his standby trial counsel in the original Motion to Vacate, he did not specifically cite ineffective assistance as a ground for relief. [Doc. 1, at 7]. If the failings of trial counsel alleged in the original Motion to Vacate constitute the grounds for Green's claim of ineffective assistance, he shall so notify the Court, rather than submitting an additional lengthy pleading related to the ineffective assistance claim.

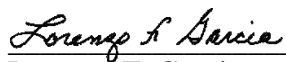
The Court further notes that Green sets forth three formal grounds for relief in his original Motion to Vacate: (1) he did not knowingly and voluntarily waive his right to counsel; (2) "Right to remain silent custodial Interogation [sic]"; and (3) the sentence violated his constitutional rights. Only the first issue is addressed in Green's original Motion to Vacate. The Court will assume that Green intends to abandon grounds (2) and (3), as he provided the Court and Respondent with no other information regarding these claims. If Green does not intend to abandon these claims, he must provide a more definite statement as to the facts which he alleges support these claims.

By permitting Green to amend his Motion to Vacate to include a claim of ineffective assistance of counsel and, if he wishes, to clarify grounds (2) and (3) of his original Motion to Vacate, the Court does not invite him to submit a lengthy discourse on the law. Rather, Green is directed to submit a short and plain statement of his claim for relief and a demand for the specific relief he seeks, as required by FED. R. CIV. P. 8(a).

IT IS THEREFORE ORDERED that the Order to Answer [Doc. 9] is hereby withdrawn.

IT IS FURTHER ORDERED that Defendant-Movant will have until January 14, 2011 to file his Amended Motion, following the directives given above.

IT IS FURTHER ORDERED that the United States will have until February 14, 2011 to file its Answer to the Amended Motion. This order supersedes all prior Orders to Answer.



Lorenzo F. Garcia
United States Magistrate Judge